

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	17-16920		
District Court/Agency Case Number(s):	2:16-cv-02726-PHX-SRB		
District Court/Agency Location:	District of Arizona (Phoenix Division)		
Case Name:	Christerphor Ziglar, et al.	v.	Express Messenger Systems, Inc. d/b/a OnTrac
If District Court, docket entry number(s) of order(s) appealed from:	Dkt. No. 64		
Name of party/parties submitting this form:	Express Messenger Systems, Inc. d/b/a OnTrac		

Please briefly describe the dispute that gave rise to this lawsuit.

Defendant-Appellant is a licensed transportation broker that contracts regional cartage service to independent regional service providers ("RSPs") in the business of providing such service. Plaintiffs-Appellees are owner-operator transportation providers who contracted with RSPs to perform transportation services as independent contractors in the State of Arizona. Plaintiffs-Appellees contend that Defendant-Appellant is their employer, and have brought a hybrid collective/class action alleging violations of federal and state wage and hour laws. Defendant-Appellant maintains that Plaintiffs-Appellees are independent contractors and, regardless, performed services for and were paid by the RSPs, and, therefore, it could not be their employer even if they are deemed employees by law.

Briefly describe the result below and the main issues on appeal.

Each Plaintiff-Appellee is a signatory to an Owner Operator Agreement with a third-party administrator, Subcontracting Concepts CT LLC, which provides various administrative services to clients in the transportation industry. The Agreement contains an arbitration provision. As a third-party beneficiary of this Agreement, Defendant-Appellant petitioned to compel arbitration of Plaintiffs-Appellees' claims. The District Court denied the petition on the ground the arbitration provision is unconscionable and, therefore, unenforceable. The issue is whether the District Court's denial was error.

Describe any proceedings remaining below or any related proceedings in other tribunals.

In the same Order denying arbitration, the Court granted Plaintiffs-Appellees' motion for conditional certification of the putative collective. Plaintiffs-Appellees have begun the notice process, as authorized by the Court's Order. Discovery has not yet begun. Defendant-Appellant intends to move to stay all district court proceedings pending this appeal.

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses
☒ is attached (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and
☒ service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHRISTERPHOR ZIGLAR, *et al.*,

Plaintiffs-Appellees,

v.

EXPRESS MESSENGER SYSTEMS,

INC.,

Defendant-Appellant.

USCA DOCKET No. 17-16920

D.C. No. 2:16-cv-02726-SRB

REPRESENTATION STATEMENT

Robert G. Hulteng, CA Bar No. 071293

Damon M. Ott, CA Bar No. 215392

Byung-Kwan Park, CA Bar No. 306719

LITTLER MENDELSON, P.C.

333 Bush Street, 34th Floor

San Francisco, CA 94104

Telephone: 415.433.1940

Facsimile: 415.399.8490

rhulteng@littler.com; dott@littler.com; bpark@littler.com

Peter C. Prynkiewicz, AZ Bar No. 015256

LITTLER MENDELSON, P.C.

Camelback Esplanade

2425 East Camelback Road, Suite 900

Phoenix, AZ 85016

Telephone: 602.474.3600

Facsimile: 602.957.1801

pprynkiewicz@littler.com

Attorneys for Defendant-Appellant
EXPRESS MESSENGER SYSTEMS, INC. d/b/a ONTRAC

REPRESENTATION STATEMENT

Pursuant to 9th Circuit Rule 3-2, below is a list of all parties to the action, along with the names, addresses, email addresses, telephone and fax numbers of their respective counsel:

Plaintiffs Christerphor Ziglar, Leah Candelaria, and Maurice Meintzer

Susan Martin
Daniel L. Bonnett
Jennifer L. Kroll
MARTIN & BONNETT, PLLC
4647 N. 32nd Street, Suite 185
Phoenix, Arizona 85018
Telephone: (602) 240-6900
Facsimile: (602) 240-2345
smartin@martinbonnett.com
dbonnett@martinbonnett.com
jkroll@martinbonnett.com

Harold Lichten
Peter Delano
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801
hlichten@llrlaw.com
pdelano@llrlawc.om

Matthew Carlson
LICHTEN & LISS-RIORDAN, P.C.
466 Geary Street, Suite 201
San Francisco, CA 94102
Telephone: (617) 994-5800
Facsimile: (617) 994-5801
mcarlson@llrlaw.com

Defendant Express Messenger Systems, Inc. d/b/a OnTrac

Robert G. Hulteng
Damon M. Ott
Byung-Kwan Park
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104
Telephone: (415) 433-1940
Facsimile: (415) 399-8490
rhulteng@littler.com
dott@littler.com
bpark@littler.com

Peter C. Prynkiewicz
LITTLER MENDELSON, P.C.
Camelback Esplanade
2425 East Camelback Road, Suite 900
Phoenix, AZ 85016
Telephone: (602) 474-3600
Facsimile: (602) 957-1801
pprynkiewicz@littler.com

Dated September 28, 2017

s/ Byung-Kwan Park

DAMON M. OTT
BYUNG-KWAN PARK
ATTORNEYS FOR DEFENDANT-
APPELLANT EXPRESS MESSENGER
SYSTEMS, INC. d/b/a ONTRAC

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9th Circuit Case Number(s) 17-16920

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) 09/28/2017 .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Harold Lichten, MA Bar No. 549689
Peter Delano, MA Bar No. 685079
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116

Signature (use "s/" format)

s/ Byung-Kwan Park